WP(C) 7098/2004

BEFORE

THE HON'BLE MR JUSTICE HRISHIKESH ROY

Heard Mr. RP Sarma, learned counsel appearing for the petitioners. Also heard Ms. M. Gogoi, learned standing counsel appearing for Education Deptt. and Mr. SS Goswami, learned counsel appearing for respondent No.5.

2. These two cases relate to claim for appointment made by the two writ petitioners for the post of Lecturers in Chemistry, pursuant to a selection made on 17.5.02 by the Assam Public Service Commission (APSC).

3. An advertisement dt. 17.5.01 was issued inviting applications for appointment, inter alia, to 13 posts of Lecturer in Chemistry in different Govt. Colleges and Institutions. The two petitioners gave their applications in response to the said advertisement dt. 17.5.01 and as they possessed the requisite UGC prescribed qualifications including NET qualification, they were shortlisted in the select list published by the APSC on 17.5.02. In the said select list, the merit position of writ petitioner Nabajyoti Deka is at serial No.20 whereas the merit position of writ petitioner Raghab Parajuli is at serial No.12.

4. It appears that for the 13 advertised posts the Govt. had initially issued appointment orders for the post of Lecturers in Chemistry, to 11 persons by order dt. 30.8.03 issued by the Secretary of Higher Education, Govt. of Assam. But out of the 11 (eleven) persons who were offered appointment, only 5 (five) persons joined in the posts of Lecturer in Chemistry in different Institutions. Thereafter by appointment order dt. 25.6.04, 4 (four) more persons were offered appointment but only 2(two) persons accepted the offer and joined in the posts of Lecturer in Chemistry.

Thus, altogether 7(seven) persons joined as Lecturer in Chemistry, although 13 posts were advertised in the advertisement dt. 17.5.01 and accordingly it is submitted that 8 posts of Lecturer in Chemistry are presently lying vacant.

5. Mr. RP Sarma, learned senior counsel appearing for the petitioners contended that as the writ petitioners possessed the requisite qualification and were also selected for appointment by the APSC in the posts of Lecturer in Chemistry and since 8 of the advertised vacancies available, a direction should be issued for consideration of the appointment of the petitioners against such vacant posts.

6. Although appointment of Jhutika Goswami (respondent No. 4) and Narayan Bordoloi (respondent No.5) is under challenge in the writ petition, the learned seniorcounsel appearing for the petitioners, however, is not pressing the challenge made against the appointment of respondents No.4 and 5.

Mr. SS Goswami, learned counsel appearing for respondent No. 5 is accordingly not required to defend his appointment. However, Mr. Goswami submits that the respondent No. 5 has been appointed as a Lecturer of Science and not exclusively as a Lecturer in Chemistry and his appointment does not have any relation with the advertisement issued and the selection made by the APSC.

7. Mr. RP Sarma, learned senior counsel has referred to a decision rendered by this Court on 2.5.06 in WP(C) No. 6038/04 and submits that similar relief, as was granted to the petitioners in that case, should also be ordered in respect of the present two petitioners.

8. The learned counsel has further contended that since the Govt. has already extended the validity of the select list to 1.8.06 by notification dt. 30.6.06, in the absence of any acceptable justification for not filling up the vacant posts in question, the case of the writ petitioners, by virtue of their selection, should be considered for appointment in the posts of Lecturer in Chemistry.

In support of the aforesaid contention the learned senior counsel has referred to the Supreme Court decision reported in 2001 (4) SCC 289 (Vijay Kumar Sharma and others vs. Chairman, School Service Commission and others) wherein the Supreme Court has directed appointment of the selected candidates against OBC category by directing extension of the select list for OBC category selectees.

The learned counsel has also referred to a decision reported in 2000 (1) SCC 600 (A.P. Aggarwal vs. Govt. of NCT of Delhi and another) in which case also the Supreme Court, on the basis of selection made, had ordered appointment of the petitioners.

9. Ms. M. Gogoi, the learned standing counsel, on the other hand, has contended that the select list in the instant case, which although stood extended to 8.1.06, has already expired and there cannot be any direction for appointment of the selectees on the basis of the select list notified on 17.5.02.

The learned counsel has further contended that after the appointment orders have been issued the Govt. has no proposal at present for filling up the existing vacancies and there may not be any direction for such appointment by the Court.

10. It is seen from the facts noticed above that as many as 13 posts of Lecturer in Chemistry in different Colleges/Institutions were advertised and for the said 13 posts, a select list consisting of 34 persons were prepared by the APSC.

From the said select list, the Govt. by appointment orders dt. 30.8.03 and 25.6.04 has offered appointment to 11 (eleven) and 4(four) persons respectively. But the appointment offers were accepted only by 7(seven) persons who have since joined as Lecturer in Chemistry in different Colleges/Institutions. Thus there appears to be at least 8 (eight) vacancies which although were advertised, have not been filled up because the appointees have chosen not to accept the offer of appointment.

11. It is undoubtedly true that there cannot be any legally enforceable right to a selectee to get an appointment. Despite selection, the appointing authority may choose not to offer appointment to a selectee even if vacancies are available.

12. However, in matters of appointment the State would be expected to adopt a fair procedure and may decline to make appointment to the vacant posts only for good and sufficient reasons having reasonable justification in the exigency of the administration.

Although the select list in the instant case is extended uptill 1.8.06, the petitioners have approached this Court within the validity period of the select list and expiry of the validity of the select list, may not by itself, be a justification for refusing the appointment to the writ petitioners, provided of course, the Govt. does not have acceptable justification for not filling up the vacant posts.

13. The petitioners in the two cases before this Court has secured position No. 12 and 20 respectively in order of merit in the select list published by the APSC and baring those, whose names appears above the writ petitioners in the select list, the writ petitioners would naturally have aright of appointment, on the basis of their selection made by the APSC.

14. Nothing is available on record to indicate the reason for refusal by the Govt. to act on the select list to fill up the available vacancies and accordingly it is difficult for this Court to take a view that there are legally justifiable reasons for not giving appointment to the persons whose names appear in the select list.

15. In view of the above discussion, I am of the view that these two writ petitions should be disposed of by directing the respondents to consider the cases of the two writ petitioners whose names appear in the select list of 34 persons prepared by the APSC for filling up the posts of Lecturer in Chemistry. Upon such consideration, if the Govt. has no justifiable reason for not filling up the vacant posts, the petitioners be considered for such appointment against the existing vacant posts of Lecturer in Chemistry.

Such consideration should be made by the respondent authorities at an early date and preferably within two months from the date of receipt of a certified copy of this order passed by this Court.

To enable consideration by the Govt, the writ petitioners are directed to make available a certified copy of this Court’s order along with other relevant papers to the respondent authorities to take a decision in terms of the direction pass

ed by this Court.

16. The writ petitions are disposed of in terms of the direction given above.